

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

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:
ROBERT J. HARRINGTON, FAYE BYRON,
CRAIG BUCK, VALERIE L. PAWSON,
RAY DRASNIN, WANDA MILLS, JEFF
GOLUMBUK, CAROLINE MARSHALL-
SMITH, ANESIA KALAITZIDIS,
KENNETH IVANOVITZ, ATHANASE
KARAGIORGOS, HARRIET ZALWANGO.
MICHAEL BLAU, KENNETH MICCICHE
and JENNIEE TSOUVRAKAS, on behalf of
themselves and others,

04 12558 NMG

: **ANSWER**

Plaintiffs,

- against -

DELTA AIRLINES, INC., AMERICAN
AIRLINES, US AIRWAYS GROUP, INC.,
d/b/a US AIRWAYS, NORTHWEST
AIRLINES, UNITED AIRLINES, INC.,
ALASKA AIRLINES, CONTINENTAL
AIRLINES, AIR CANADA, OLYMPIC
AIRLINES CORPORATION LIMITED,
CHINA SOUTHERN AIRLINES COMPANY
LIMITED, DEUTSCHE LUFTHANSA, A.G.,
d/b/a LUFTHANSA AIRLINES, SWISS
INTERNATIONAL AIRLINES LTD., d/b/a
SWISSAIR, BRITISH AIRWAYS, PLC, d/b/a
BRITISH AIRWAYS, MIDWAY AIRLINES
CORP., d/b/a MIDWAY AIRLINES,
ALITALIA-LINEE AEREE ITALIANE S.p.A.,
d/b/a ALITALIA AIRLINES, SOUTHWEST
AIRLINES, CO., d/b/a SOUTHWEST
AIRLINES, CHINA EASTERN AIRWAYS-
SERVICES, SA, d/b/a CHINA EASTERN
AIRWAYS and AIR TRANSPORT
ASSOCIATION,

Defendants.
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Defendant China Eastern Airlines, by its attorneys Campbell, Campbell & Edwards and Condon & Forsyth LLP, answers plaintiffs' Complaint, Jury Claim and Request for Class Certification ("Complaint") as follows:

AS TO INTRODUCTION AND OVERVIEW OF ACTION

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Complaint to the extent they are directed at parties other than CHINA EASTERN. CHINA EASTERN specifically denies the allegations in paragraph 1 of the Complaint to the extent they are directed toward CHINA EASTERN or can be construed to assert a claim against CHINA EASTERN, and leaves all questions of law for the Court.

AS TO PARTIES AND FACTS

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33 of the Complaint except admits that plaintiff Jeff Golumbuk purchased an airline ticket for travel on CHINA EASTERN, that CHINA EASTERN is a foreign corporation organized and existing under the laws of China with its executive offices located at 2550 Hoqqiao Road, Shanghai, China, and leaves all questions of law for the Court.

AS TO CLASS ACTION ALLEGATIONS

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 34, 38, and 41 of the Complaint, and leaves all questions of law for the Court.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 35, 36, 37, 39, 40, 42 and 43 of the Complaint to the extent they are directed at parties other than CHINA EASTERN. CHINA EASTERN specifically denies the

allegations in paragraphs 35, 36, 37, 39, 40, 42 and 43 of the Complaint to the extent they are directed toward CHINA EASTERN or can be construed to assert a claim against CHINA EASTERN, and leaves all questions of law for the Court.

AS TO COUNT I

5. In response to the introductory paragraph of Count I of the Complaint, CHINA EASTERN repeats, reiterates and realleges each and every response contained in paragraphs 1 through 4 of this Answer with the same force and effect as if set forth fully and at length herein.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44 of the Complaint to the extent they are directed at parties other than CHINA EASTERN. CHINA EASTERN specifically denies the allegations in paragraph 44 of the Complaint to the extent they are directed toward CHINA EASTERN or can be construed to assert a claim against CHINA EASTERN, and leaves all questions of law for the Court.

AS TO COUNT II

7. In response to the introductory paragraph of Count II of the Complaint, CHINA EASTERN repeats, reiterates and realleges each and every response contained in paragraphs 1 through 6 of this Answer with the same force and effect as if set forth fully and at length herein.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 45 and 46 of the Complaint to the extent they are directed at parties other than CHINA EASTERN. CHINA EASTERN specifically denies the allegations in paragraphs 45 and 46 of the Complaint to the extent they are directed toward CHINA EASTERN or can be construed to assert a claim against CHINA EASTERN, and leaves all questions of law for the Court.

AS TO COUNT III

9. In response to the introductory paragraph of Count III of the Complaint, CHINA EASTERN repeats, reiterates and realleges each and every response contained in paragraphs 1 through 8 of this Answer with the same force and effect as if set forth fully and at length herein.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 47, 48, 49, 50 and 51 of the Complaint to the extent they are directed at parties other than CHINA EASTERN. CHINA EASTERN specifically denies the allegations in paragraphs 47, 48, 49, 50 and 51 of the Complaint to the extent they are directed toward CHINA EASTERN or can be construed to assert a claim against CHINA EASTERN, and leaves all questions of law for the Court.

AS TO COUNT IV

11. In response to the introductory paragraph of Count IV of the Complaint, CHINA EASTERN repeats, reiterates and realleges each and every response contained in paragraphs 1 through 10 of this Answer with the same force and effect as if set forth fully and at length herein.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 52 of the Complaint to the extent they are directed at parties other than CHINA EASTERN. CHINA EASTERN specifically denies the allegations in paragraph 52 of the Complaint to the extent they are directed toward CHINA EASTERN or can be construed to assert a claim against CHINA EASTERN, and leaves all questions of law for the Court.

AS TO COUNT V

13. In response to the introductory paragraph of Count V of the Complaint, CHINA EASTERN repeats, reiterates and realleges each and every response contained in paragraphs 1 through 12 of this Answer with the same force and effect as if set forth fully and at length herein.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 53 and 54 of the Complaint to the extent they are directed at parties other than CHINA EASTERN. CHINA EASTERN specifically denies the allegations in paragraphs 53 and 54 of the Complaint to the extent they are directed toward CHINA EASTERN or can be construed to assert a claim against CHINA EASTERN, and leaves all questions of law for the Court.

AS TO CLASS ACTION STATUS

15. CHINA EASTERN denies the allegations contained in the Complaint that this matter can be certified as a class action jointly against all airline defendants or individually against any airline.

AS TO JURY CLAIM

16. CHINA EASTERN denies the allegations contained in Complaint demanding a jury trial.

**AS AND FOR A FIRST
AFFIRMATIVE DEFENSE**

17. The Complaint fails to state a claim against CHINA EASTERN upon which relief can be granted.

**AS AND FOR A SECOND
AFFIRMATIVE DEFENSE**

18. The Class Representative fails to state a claim against CHINA EASTERN upon which relief can be granted.

**AS AND FOR A THIRD
AFFIRMATIVE DEFENSE**

19. CHINA EASTERN is a "foreign state" as that term is defined in 28 U.S.C. § 1603

and, therefore, is entitled to all the rights, privileges, protections and defenses afforded by the Foreign Sovereign Immunities Act of 1976, Pub. L. 94-853, 90 Stat. 2891 *codified at* 28 U.S.C. §§ 1330, 1332, 1391 (f), 1441 (d) and 1602-1611.

**AS AND FOR A FOURTH
AFFIRMATIVE DEFENSE**

20. The Court lacks personal jurisdiction over the person of CHINA EASTERN.

**AS AND FOR A FIFTH
AFFIRMATIVE DEFENSE**

21. The Complaint should be dismissed for improper service of process.

**AS AND FOR A SIXTH
AFFIRMATIVE DEFENSE**

22. Plaintiffs' state law claims constitute a suit for recovery of a United States federal tax and are barred by 26 U.S.C. § 7422.

**AS AND FOR A SEVENTH
AFFIRMATIVE DEFENSE**

23. Plaintiffs' claims against CHINA EASTERN are preempted by federal law, including the Federal Aviation Act of 1958 as amended (P.L. 5-726, 72 Stat. 731, formerly codified as 49 U.S.C. §1301 *et seq.* now recodified and incorporated into 49 U.S.C. § 40101 *et seq.*), and 49 U.S.C. § 41713.

**AS AND FOR AN EIGHTH
AFFIRMATIVE DEFENSE**

24. Plaintiffs' are not entitled to the claimed refund as they have failed to comply with the relevant requirements or conditions precedent to obtain the claimed refund.

**AS AND FOR A NINTH
AFFIRMATIVE DEFENSE**

25. Pursuant to its tariffs and contract of transportation, CHINA EASTERN is not liable

to plaintiffs.

**AS AND FOR A TENTH
AFFIRMATIVE DEFENSE**

26. CHINA EASTERN performed all of the terms and conditions of the contract between the parties, if any, which were to be performed by CHINA EASTERN, in accordance with such terms and conditions of contract.

**AS AND FOR AN ELEVENTH
AFFIRMATIVE DEFENSE**

27. Plaintiffs' claims are barred by the relevant statute of limitations set forth by federal and Massachusetts law.

**AS AND FOR AN TWELFTH
AFFIRMATIVE DEFENSE**

28. No fiduciary relationship exists between CHINA EASTERN and plaintiffs.

**AS AND FOR AN THIRTEEN
AFFIRMATIVE DEFENSE**

29. Plaintiffs' remedy, if any, for the claimed refunds of taxes/fees/charges is not properly against CHINA EASTERN but rather is against the governmental or non-governmental entity to whom the taxes/fees/charges were remitted.

**AS AND FOR AN FOURTEENTH
AFFIRMATIVE DEFENSE**

30. Plaintiffs' class action suit is not permitted under the Federal Rules of Civil Procedure.

WHEREFORE, defendant CHINA EASTERN demands judgment dismissing the Complaint in its entirety or, alternatively, judgment limiting their liability pursuant to the foregoing, together with costs and disbursements.

Dated: January 25, 2005

By: /s/ Kathleen M. Guilfoyle
Kathleen M. Guilfoyle, BBO #546512
CAMPBELL CAMPBELL EDWARDS
& CONROY P.C.
One Constitution Plaza
Boston, Massachusetts 02129
(617) 241-3000

-and-

CONDON & FORSYTH LLP
Thomas J. Whalen, Esq.
685 Third Avenue
New York, New York 10017
(212) 490-9100

Attorneys for Defendant
CHINA EASTERN AIRLINES

To: Evans J. Carter, Esq.
HARGARVES, KARB, WILCOX & GALVANI, LLP
550 Cochituate Road – P.O. Box 966
Framingham, MA 01701-0966
(508) 620-0140
Attorneys for Plaintiffs

Sheri F. Murry, Esq.
385 Broadway, Suite 201
Revere, MA 02151
(781) 286-1560
Attorney for Plaintiff
Robert J. Harrington

Matthew A. Porter, Esq.
Michael S. Shin, Esq.
DECHERT LLP
200 Clarendon Street
27th Floor
Boston, MA 02116
(617) 728-7100
Attorneys for Defendants
Delta Air Lines, Inc.,
American Airlines, Inc., Northwest
Airlines, Inc., Alaska Airlines, Inc.
Continental Airlines, Inc., Southwest
Airlines Co., and Air Transport
Association of America, Inc.

Andrew J. Harakas, Esq.
CONDON & FORSYTH LLP
685 Third Avenue
New York, New York 10017
Attorneys for Defendant
Olympic Airways, SA

David W. Ogden, Esq.
WILMER CUTLER PICKERING
HALE AND DORR LLP
2445 M Street, NW
Washington, DC 20037-1420
(202) 663-6000
Attorneys for Defendant
Deutsche Lufthansa, A.G. d/b/a
Lufthansa Airlines

Kevin C. Cain, Esq.
PEABODY & ARNOLD
30 Rowes Wharf
Boston, MA 02110
(617) 951-2045
Attorneys for Defendants
Alitalia-Linee Aeree Italiane S.p.A., d/b/a
Alitalia Airlines

British Airways PLC
75-20 Astoria Boulevard
Jackson Heights, NY 11370